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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A. No. 543 of 2007

Date of decision: 4.12.2007

The Punjab Small Industries & Export Corpn. Ltd.

...Appellant

Versus

The Commissioner of Income Tax, Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sanjay Bansal, Advocate with
Mr. Parvesh Saini, and Mr. Parshant Bansal, Advocates
for the appellant.

Mr. S.K.Garg Narwana, Advocate for the respondent.

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RAJESH BINDAL, J.

This appeal has been preferred under Section 260-A of the Income Tax Act, 1961 (for short "the Act") proposing the following substantial questions of law, arising out of order dated August 3, 2007 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (for short "the Tribunal) in ITA No.142/Chandi/2003, in respect of the assessment year 1994-95:-

i) Whether on the facts and in the circumstances of the case, the Tribunal has acted perversely and illegally by not reversing the action of Assessing Officer and CIT (A) in treating the advance rent as the cost of acquisition of tenancy rights and by remanding the matter back to the file of the Assessing Officer, when the issue arising for its determination was squarely covered by the

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decision rendered by the Hon'ble Supreme court in the case of CIT Vs. D.P. Sandu Bros. Chembur P. Ltd. (2005) 273 ITR 1 (SC) ?

ii) Whether on the facts and in the circumstances of the case, the Tribunal misdirected itself in law as well on facts in remanding the case to the Assessing Officer in the case of the appellant for the assessment year 1994-95 for the re-calculation of capital gains tax when the cost of acquisition of tenancy rights was not ascertainable?

iii) Whether the impugned order passed by the Tribunal remanding back the case to the Assessing officer for de novo adjudication fulfills the requirements of a speaking order ?

During the course of assessment proceedings, it was noticed that the assessee had received an amount of Rs. 3,96,66,451/- on account of transfer of tenancy rights to State Bank of Patiala in respect of its property at Bombay. However, the same was claimed to be exempted from taxation.

The assessee had acquired tenancy rights for a show room measuring 2547 sq. fts. for a term of 60 years vide agreement dated July 05, 1977. The basic rent for the show room was fixed @ of Rs. 4.111211 per sq. metre per month in respect of Ist floor and Rs. 1.943481 per sq. metre per month for the mezzanine floor. The assessee was required to pay the entire basic rent and the parking space rent for 60 years in advance, which was accordingly paid. According to the assessee the amount of rent paid by the assessee in advance was adjustable towards monthly payment of rent as per agreement. Vide agreement dated March 30, 1997 the assessee agreed to transfer the tenancy rights for the remaining period to State Bank of Patiala and received a sum of Rs. 3,96,66,451/- on account thereof. The revenue sought to levy capital gains tax on this receipt, which was disputed by the assessee. The Assessing Officer noticed that besides the lumpsum payment of basic rent made by the assessee to the lessor for the entire period of 60 years of lease, the out going rent had been fixed at Rs. 9571/-

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per month, which was paid by the assessee. While relying upon the judgment of Hon'ble the Supreme Court, the Assessing Officer opined that lumpsum payment made at the time of acquisition of the tenancy rights would be a consideration for acquisition of asset and accordingly, the consideration later earned by the assessee for transfer of those rights would be assessable to capital gains tax. In appeal before the Commissioner of Income Tax (Appeal) (for short 'the CIT (A)'), the assessee failed on this ground. Still further in appeal before the Tribunal, the matter was referred back to the Assessing Officer for fresh adjudication after affording opportunity to the assessee to produce any further evidence to substantiate its claim.

The submission of the learned Senior Counsel appearing for the assessee is that inspite of the fact that the Tribunal had recorded findings in the order that the cost of acquisition of asset in the present case is not determinable, keeping in view the judgment of Hon'ble the Supreme court in **CIT Vs. D.P.Sandu Bros. Chembur P. Ltd (2005) 273 ITR 1 (SC)** the appeal filed by the assessee deserved to be accepted in toto and there was no need for remanding the case. The apprehension expressed by him is that even though judgment in D.P.Sandhu's case (supra) was cited but the Tribunal without opining anything remitted the matter to the Assessing Officer, who may not look into the judgment in absence of any findings on that issue by the Tribunal. Learned counsel for the revenue, however, submitted that these findings are perverse in case the record of the Assessing Officer is considered, where it has specifically been recorded that besides lumpsum payment of basic rent, additional rent per month was being paid by the assessee. However, the submission was made that as the matter was only remanded back, the revenue did not chose to file appeal before this Court.

We find the contention of learned senior counsel for the appellant to be totally misconceived. In the present case, the judgment has been referred to in the order passed by the Tribunal. Even though the Tribunal may not have discussed the same in detail in the impugned order, however, still in terms of provisions of Article 141 of the Constitution of

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India, the law laid down by Hon'ble the Supreme Court is binding on all the Courts/authorities subordinate to it and no Court or authority is expected to over look the same even if no judgment is cited in the order remanding the case to a lower authority. In the present case, the judgment is referred to in the impugned order. There may even be a case where a judgment on the issue may be delivered subsequent to the remand of the case, even that would be binding on the lower authority. Still further the matter has only been remanded back to the Assessing Officer for fresh determination with liberty to the assessee to lead any further evidence if requires. The issue has not been finally determined. In case still the issue is determined against the assessee, it have its remedies in accordance with law.

In **New Cawnpore Flour Mills Vs. Commissioner of Income-Tax (2005) 275 I.T.R. 45**, it has been opined that reference cannot be made in a case where in appeal the Tribunal without deciding any issue only remands the matter back.

In view of our above discussion, we do not find that any substantial question of law arises in the present appeal. Accordingly, the same is dismissed.

(Rajesh Bindal)
Judge

December 04, 2007 **(M.M.Kumar)**
Pka **Judge**